

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:23-cv-329-KDB-DCK**

BYRON LAMAR SAMUELS, JR.,)
)
Plaintiff,)
)
vs.)
)
GARRY MCFADDEN, et al.,) **ORDER**
)
Defendants.)
)

THIS MATTER is before the Court sua sponte.

The pro se Plaintiff filed this action pursuant to 42 U.S.C. § 1983. [Doc. 1]. He is proceeding in forma pauperis. [Doc. 4]. On August 15, 2023, the Court dismissed the Complaint on initial review. [Id.]. The Court granted the Plaintiff 30 days to file a superseding Amended Complaint. [Id.]. The Plaintiff was cautioned that, “[s]hould the Plaintiff fail to timely amend his Complaint in accordance with this Order, the Court will dismiss this action without further notice.” [Id. at 7]. A copy of the Order on initial review was mailed to the Plaintiff at his address of record on the same day it was entered. The Plaintiff has failed to file a superseding Amended Complaint and the time to do so has expired.

The Plaintiff appears to have abandoned this action and the Court is unable to proceed. This case will therefore be dismissed without prejudice. See Fed. R. Civ. P. 41(b) (“If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.”); Link v. Wabash R.R. Co., 370 U.S. 626, 630-33 (1962) (although Rule 41(b) does not expressly provide for sua sponte dismissal, Rule 41(b) does not

imply any such restriction and a court has the inherent power to dismiss a case for lack of prosecution or violation of a court order).

IT IS, THEREFORE, ORDERED that this action is **DISMISSED WITHOUT PREJUDICE.**

IT IS FURTHER ORDERED that the Clerk of Court is directed to terminate this action.

Signed: September 28, 2023



Kenneth D. Bell
United States District Judge